C.P. 100 SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Writ Petition NO. 2742 /2006 (S.B.)

PETITIONER : Smt. Gayatri Devi
aged about 39 years,
W/o. Ram Manohar Mishra
R/o. Village Gamju, Tah. Takhatpur
District Bilaspur (C.G.)

P.R. No. 2797/06
Presented by Shri H.K. Sharma
dated 12/6/06

VERSUS

RESPONDENT :1 State of Chhattisgarh
Through Secretary
Panchayat & Social Welfare
Department, D.K.S. Bhawan
Raipur (C.G.)

2. Competent Authority-Sub-
Divisional Officer (Revenu)
Kota, Dist. Bilaspur (C.G.)

3. The Collector
Bilaspur, District Bilaspur (C.G.)

4. Gram Panchayat Gamju
Tahsil Takhatpur, District
Bilaspur (C.G.)

RE-TED-COPY
CIS 12/6/06 BILASPUR

WRIT PETITION U/A 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

(52)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP: 2742/06 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	19-9-2006 Mr. H.V. Sharma, counsel for the petitioner. Mr. U.N.S. Deo, Govt. Advocate for the State/respondents No.1 to 3. Mr. R.D. Rai, counsel for the intervener on I.A.No.7028/2006 filed on behalf of Smt. Dhankunwar Gond. Heard learned counsel for the parties for final disposal of the petition at the admission stage itself. I.A.No.8781/2006, application for taking documents on record, is allowed. Documents are taken on record. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned legality and validity of resolution dated 10-3-2006, whereby no confidence motion against the petitioner to hold the post of Sarpanch, Gram Panchayat: Gamju, has been held to be carried out. Brief facts leading to filing of this writ petition are that the petitioner was elected as Sarpanch of Gram Panchayat: Gamju in the Gram Panchayat elections. However, members of the Panchayat gave a notice to the prescribed authority under Rule 3 of the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janapad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudh Avishwas Prastav) Niyam, 1994 (hereinafter referred to as 'the Rules, 1994'). On receiving the notice, the prescribed authority after satisfying with the admissibility of the notice, issued notice on 27-2-2006 to the members of Gram Panchayat: Gamju for discussion on the no confidence motion on 10-3-2006 at 12 noon in the Panchayat building of Gram Panchayat: Gamju, as per the provisions of sub-	

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आदेश पत्रक

मामला क्रमांक ..... सन् 200 .

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	-2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

rule (3) of Rule 3 of the Rules, 1994. However, on 6-3-2006, notice Annexure P-4 was again issued by the prescribed authority, whereby the place of meeting was changed from Gram Panchayat building, Gamju to Primary School building, Gamju, on the ground that there is no building of the Gram Panchayat and on that day, out of 16 members, 15 members were present in the meeting, except the petitioner herein. The said meeting was held under the supervision of Mr. V.K. Lakra, Tehsildar, and after discussion, motion was carried out unanimously. The petitioner has challenged the said motion on the ground that the petitioner made a reference before the Collector as per the provisions of sub-section (4) of Section 21 of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 and the same has not been decided. Main ground raised by the petitioner herein is that when the notice was once issued on 27-2-2006, whereby the meeting was fixed on 10-3-2006 in the Panchayat building, there is no provision in the rule to change the place of meeting by another notice in between, as such, whole proceedings were contrary to the Rules, 1994. Therefore, there was no clear notice of seven days and the service of notice was not affected on the petitioner.

Having heard learned counsel for the parties, I have perused sub-rule (3) of Rule 3 of the Rules, 1994, which envisages that on receiving the notice under sub-rule (1) the prescribed authority shall satisfy himself about the admissibility of the notice and on being satisfied, shall fix the date, time and place for the meeting of the Gram Panchayat which shall not be more than fifteen days from the date of receipt of the said notice. The notice of such meeting specifying the date, time and place thereof shall be caused to be

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आदेश पत्रक

मामला क्रमांक WP 2742 **सन्** 2006

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

despatched by him through the Secretary of the Gram Panchayat to every member of the Panchayat concerned seven days before the meeting.

It is admitted position that the earlier notice dated 27-2-2006 was issued fixing the meeting on 10-3-2006 in the Panchayat building, therefore, that notice was in consonance with the provisions of sub-rule (3) of Rule 3 of the Rules, 1994. Now, the question remains as to whether the notice Annexure P-4, whereby the place of meeting was changed, amounts to issuance of fresh notice and contrary to sub-rule (3) of Rule 3 of the Rules, 1994. It is also admitted position that date & time which was fixed in the earlier notice dated 27-2-2006 was not changed by the notice Annexure P-4 in which the place of meeting was changed on account of the fact that in the earlier notice it was mentioned that the meeting will be held in the Gram Panchayat building, as there is no Gram Panchayat building of Gram Panchayat: Gamju, therefore, the place of meeting was changed to Primary School, Gamju. Changing the place of sitting in the same village on account of the mistake of the fact that no Gram Panchayat building was existing, in my opinion, does not affect the validity of the notice dated 27-2-2006. Moreover, even though the petitioner has mentioned in para 6.2 (Grounds) of the writ petition, that the petitioner was deprived of an opportunity to defend her during the no confidence motion, but as it is admitted position that except the petitioner all other 15 members were present in the meeting and unanimous resolution was carried out against the petitioner. Clear time of more than seven days was given in the earlier notice, which was received by the petitioner, same has been filed along with the petition as Annexure P-3, therefore, it cannot be

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आदेश पत्रक

मामला क्रमांक ...W.P.2742/सन् 2006

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

said that on account of change of place of the meeting, any serious prejudice was caused to the petitioner and the petitioner was deprived of opportunity to defend the no confidence motion. The petitioner should not forget that she was an elected Sarpanch of Village: Ganju. She was entitled to continue on the post of Sarpanch so long the elected members of the Panchayat were having confidence in her, as per the scheme of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 and the Rules, 1994. As all the 15 elected members of the Panchayat lost confidence in the petitioner, therefore, unanimous no confidence was carried against her.

Now, coming to the service of notice, sub-rule (3) of Rule 3 of the Rules, 1994 requires that the notice should be despatched by the prescribed authority before seven days. Sub-rule (3) of Rule 3 does not requires that the notice should be served on each and every member, the only requirement is that the notice has to be despatched seven days before the meeting. In this case, the notice was already despatched, 15 members except the petitioner were present in the meeting and unanimous resolution was passed. Therefore, the ground raised by the petitioner that the notice was not served upon her is devoid of merit.

As far as the point that the petitioner was deprived from speaking during the no confidence motion is concerned, the earlier notice was received by the petitioner, each and every member of the Panchayat was aware of the meeting and that is why, except the petitioner, every member remained present in the meeting and unanimous resolution was passed. Therefore, it cannot be said that the petitioner was not having the knowledge of the

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

meeting, as such, there is no question of depriving the petitioner from appearing and speaking in the meeting. The petitioner herself remained absent on her own.

As far as the decision on the reference by the Collector is concerned, in the first instance, learned counsel for the petitioner submits that he is not aware whether as on date the reference is not decided or not. Apart from that the writ petition is being decided on merit, therefore, it is irrelevant whether the reference has been decided or not.

In the result, the writ petition is devoid of merit, same is liable to be dismissed and it is hereby dismissed, at the admission stage itself. However, there will be no order as to costs.

Interim order dated 16-6-2006 granted by this Court stands vacated.

Consequently, M.(W.)P.No.2818/2006, I.A.Nos.6811/2006, 7028/2006 and 7029/2006 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Soma

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26.9.07
31/10/06